

Before the  
Administrative Hearing Commission  
State of Missouri



MISSOURI REAL ESTATE COMMISSION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 12-1760 RE
	)	
MARY A. JOHNSON-HICKS and	)	
MARY ONE JOHNSON HOME TEAM	)	
REALTY, LLC,	)	
	)	
Respondents.	)	

**ORDER GRANTING SUMMARY DECISION IN PART**

Mary A. Johnson-Hicks and Mary One Johnson Home Team Realty, LLC (“Mary One Realty”) (together, “Respondents”) are subject to discipline because they failed to respond to an inquiry by the Missouri Real Estate Commission (“the MREC”) within the deadline set by regulation.

**Procedure**

On September 25, 2012, the MREC filed a complaint seeking to discipline Respondents. On September 28, 2012, we served Mary One Realty, and on October 12, 2012, Johnson-Hicks, with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. On October 25, 2012, Respondents filed an answer.

On May 14, 2013, the MREC filed a motion for summary decision. Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if the MREC establishes facts that Respondents do not dispute and entitle the MREC to a favorable decision. On June 3, 2013, Respondents filed a response to the motion for summary decision. On June 28, 2013, the MREC filed a response to Respondents' response.

The following facts are undisputed.

### **Findings of Fact**

1. Johnson-Hicks is licensed by the MREC as a broker associate. At all relevant times, Johnson-Hicks' license was active and current.
2. Mary One Realty is licensed by the MREC as a real estate association. At all relevant times, Mary One Realty's license was active and current.
3. Johnson-Hicks is a broker associate at Mary One Realty.
4. On June 17, 2010, Angela Dixon,<sup>1</sup> a salesperson licensed by the MREC, sought to transfer her salesperson license from Mary One Realty.
5. Dixon sent a letter by certified mail to Mary One Realty on or about June 17, 2010. The letter requested that Mary One Realty and Johnson-Hicks return Dixon's license to the MREC.<sup>2</sup>
6. The MREC did not receive Dixon's license from Johnson-Hicks and Mary One Realty in June or July, 2010.
7. On July 20, 2010, the MREC sent Johnson-Hicks and Mary One Realty a letter to their registered business address, 905 Locust, St. Louis, Missouri, 63101, by certified and regular

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<sup>1</sup> Dixon's name at the time she signed the affidavit was Angela Dixon Harris. We will refer to her as Dixon, her name when she worked for Respondents.

<sup>2</sup> Attached to the MREC's response to Johnson-Hicks' response is Dixon's affidavit and a copy of the certified mail receipt. The signature is illegible. There is no date of delivery. There is a date printed above Dixon's name and address that appears to be July 6. It is barely legible, and there is no indication what the date means.

mail. The letter asserted that Mary One Realty and Johnson-Hicks had failed to comply with Dixon's request to submit Dixon's license to the MREC within the mandatory 72-hour period required by regulation 20 CSR 2250-4.050(3). The letter states:

Ms. Dixon's license must be returned to this office by August 20, 2010. Please provide a written response as to why this license was not returned within the required 72-hour timeframe.[<sup>3</sup>]

8. While the certified letter was returned unclaimed, the regular posted mail was not returned to the MREC.

9. On August 6, 2010, the MREC received Dixon's license from Mary One Realty and Johnson-Hicks.

10. The MREC never received the requested letter of explanation concerning the MREC's allegation that Johnson-Hicks and Mary One Realty failed to turn in Dixon's license to the MREC on time.

### **Conclusions of Law**

We have jurisdiction to hear this case.<sup>4</sup> The MREC has the burden of proving that Johnson-Hicks has committed an act for which the law allows discipline.<sup>5</sup> The MREC alleges that there is cause to discipline Respondents' licenses under § 339.100:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

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<sup>3</sup> Exhibit to Petitioner's motion for summary decision.

<sup>4</sup> Section 621.045. Statutory references, unless otherwise noted, are to the 2012 Supplement to the Revised Statutes of Missouri.

<sup>5</sup> *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others;

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(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860\*, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860\*;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

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(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

Violation of Regulations – Subdivision (15)

Regulation 20 CSR 2250-4.050, states:

(3) Within seventy-two (72) hours of the termination of the association of any broker- salesperson or salesperson, a broker shall notify the commission and shall return to the commission that licensee's license. The broker shall provide a dated and timed receipt to the licensee when the licensee submits a letter of termination to the broker.

The MREC asserts that the certified mail receipt shows that Johnson-Hicks signed for and received Dixon's letter no later than July 8, 2010. As we noted, the signature on the return receipt is illegible, and there is no delivery date listed. The date above Dixon's name and address appears to be July 6, but it is barely legible and we cannot determine what the date signifies. Therefore, we find the MREC failed to prove when Johnson-Hicks and Mary One Realty received the notice of termination, and we cannot determine whether the 72-hour deadline was met.

Regulation 20 CSR 2250-8.170 states:

(1) Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission's written request or inquiry, mailed to the licensee's address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

Respondents argue that they complied with this regulation by sending Dixon's license to the MREC within 30 days of the date of the MREC's letter. The MREC argues that it requested further information – concerning the 72-hour deadline – that it never received. We agree with the MREC. Although we cannot find a violation of the 72-hour deadline based on the evidence before us at this time, the MREC was authorized to request information about it. We do not presume the disputed fact, as Respondents assert.

An appropriate response, if Respondents believed they did not violate the 72-hour deadline, would have been a letter in writing setting forth that contention. Although Respondents returned Dixon's license, they did not respond to the MREC's request concerning information about the 72-hour deadline. They violated 20 CSR 2250-8.170(1). There is cause for discipline under § 339.100.2(15).

#### Failure to Remit – Subdivision (3)

For the reasons stated above, we cannot determine whether Dixon's license was remitted within a reasonable time. We deny summary decision as to subdivision (3).

#### Grounds to Refuse a License – Subdivision (16)

Section 339.040 states in pertinent part:

1. Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson,

or salesperson business present, satisfactory proof to the commission that they:

- (1) Are persons of good moral character; and
- (2) Bear a good reputation for honesty, integrity, and fair dealing; and
- (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

Good moral character is honesty, fairness, and respect for the law and the rights of others.<sup>6</sup> Failing to respond to the MREC's correspondence is not sufficient to support a finding that Johnson-Hicks lacks good moral character.

Reputation is the "consensus view of many people[.]"<sup>7</sup> Reputation is not a person's actions; it is "the general opinion . . . held of a person by those in the community in which such person resides[.]"<sup>8</sup> We have no evidence of Respondents' reputation.

Competent is defined as "having requisite or adequate ability or qualities[.]"<sup>9</sup> Incompetency is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform in an occupation,<sup>10</sup> and a "state of being."<sup>11</sup> One instance of failing to respond to the MREC's correspondence is not sufficient to support a finding that Johnson-Hicks is incompetent.

We deny summary decision as to subdivision (16).

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<sup>6</sup>*Hernandez v. State Bd. of Regis'n for the Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997).

<sup>7</sup> *Haynam v. Laclede Elec. Coop.*, 827 S.W.2d 200, 206 (Mo. banc 1992).

<sup>8</sup> *State v. Ruhr*, 533 S.W.2d 656, 659 (Mo. App., K.C.D. 1976) (quoting Black's Law Dictionary, Rev. 4<sup>th</sup> ed. 1467-68)).

<sup>9</sup> MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 253 (11<sup>th</sup> ed. 2004).

<sup>10</sup> *Tendai v. Missouri Bd. of Regis'n for the Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005).

<sup>11</sup> *Albanna v. State Bd. of Regis'n for the Healing Arts*, 293 S.W.3d 423, 436 (Mo. banc 2009).

### Other Conduct – Subdivision (19)

The MREC argues that there is cause for discipline under § 339.100.2(19) for “any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]” The adjective “other” means “not the same : DIFFERENT, any [other] man would have done better[.]”<sup>12</sup> Therefore, subdivision (19) refers to conduct different from that referred to in the remaining subdivisions of § 339.100.2.

We have found that failing to respond to the MREC’s correspondence is cause for discipline under § 339.100.2(15). The MREC failed to prove the other conduct that it alleges is cause for discipline. We deny summary decision under subdivision (19).

### **Summary**

Cause exists to discipline the licenses of Respondents pursuant to § 339.100.2(15) for violating 20 CSR 2250-8.170(1). The MREC shall inform us by August 9, 2013, whether it will proceed to the hearing scheduled on August 14, 2013, on the remaining allegations.

SO ORDERED on August 6, 2013.

/s/ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>12</sup>WEBSTER’S THIRD INTERNATIONAL DICTIONARY 1598 (unabr. 1986).